

Scottish Law Commission

(SCOT LAW COM No 131)

TWENTY-SIXTH ANNUAL REPORT 1990–91

Laid before Parliament by the Lord Advocate
under Section 3(3) of the Law Commissions Act 1965

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

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SCOTTISH LAW COMMISSION

Report for the year ended 15th June, 1991

To: The Right Honourable the Lord Fraser of Carmyllie, QC,
Her Majesty's Advocate

In accordance with section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended,¹ we have the honour to submit this the Twenty-Sixth Annual Report of the Scottish Law Commission.

(Signed) C K DAVIDSON, *Chairman*
E M CLIVE
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IAIN MACPHAIL
W A NIMMO SMITH

KENNETH F BARCLAY, *Secretary*
23 September 1991

1. Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002).

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Part I Introduction

1.1 The year under review has been marked by substantial and satisfactory progress in the preparation and completion of law reform proposals. We have submitted reports on the following topics:— *The Passing of Risk in Contracts for the Sale of Heritable Property*, *Private International Law—Choice of Law in Tort and Delict*, and *Rights of Suit in Respect of Carriage of Goods by Sea*. We have also published discussion papers on the following topics:— *Parental Responsibilities and Rights*, *Guardianship and the Administration of Children's Property*, *The Effect of Death on Damages*, *Extra-Territorial Effect of Arrestments and Related Matters*, *Law of the Tenement*, and *Confidentiality in Family Mediation*. A discussion paper on *Property Law—Abolition of the Feudal System* was published in July 1991 just after the close of the year. Although performance has not in all respects matched the prognosis made in the preceding annual report, various unforeseen demands on our resources calling for swift response have required us to delay work on some current projects.

Work undertaken with the Law Commission

1.2 We record with satisfaction a year of productive co-operation with the English Commission. In December 1990 the joint report on *Choice of Law in Tort and Delict*¹ was published. The main recommendation made by the joint report is for abolition of the “double-actionability” rule which in cases containing a foreign element requires the pursuer to satisfy a Scottish court that he can succeed both under Scots law and under the relevant foreign law. In place of the “double-actionability” rule it is recommended that a general rule be substituted whereby in cases concerned with fatal accidents, personal injury and damage to property, the law applicable to determination of the dispute should be that of the country where the relevant events occurred. This recommended rule is, however, qualified to allow the law of another country to govern if the court is satisfied that it would be substantially more appropriate. Further, it is recommended that the law of the relevant part of the United Kingdom will always govern in cases arising out of civil wrongs alleged to have occurred in the United Kingdom. Specific provision is also recommended for cases concerning defamatory statements having their origin in the relevant part of the United Kingdom. In such cases the relevant United Kingdom law will always apply even if the offending statement is subsequently published abroad. The joint report takes account of responses made by consultees to proposals for reform contained in a Joint Working Paper and Consultative Memorandum which was published in 1984. It is therefore plain that this project occupied the attention of successive Commissioners over several years. The issues raised were unusually refined and complicated. From time to time they gave rise to changes of opinion among Commissioners. There was also considerable divergence of view among the distinguished consultees who submitted comments on the proposals. Superficially, it might appear that this project occupied time and resources which might more profitably have been devoted to other reforms. We do not share this view. We recognise the force of the contention that, because of the variety of the subject-matter, it is hard to envisage legislation being sufficiently flexible and comprehensive to make it a more attractive option than judicial development of the law. We have, however, been impressed by the comparative paucity of decided cases in this area of the law and by the rigidity which has been displayed by certain courts, notably Scottish courts, in interpreting the *dicta* which form the basis of the “double-actionability” rule. We have, therefore, been convinced that legislation is needed to abolish the rule. Once that has been done, we have thought fit to recommend a statutory scheme which aims at reconciling, so far as can be, some of the conflicting views communicated at consultation.

1. (1990) Law Com No 193, Scot Law Com No 129. See also para 2.34.

1.3 In March 1991 a joint report of the Commissions was published on *Rights of Suit in Respect of Carriage of Goods by Sea*.¹ The joint report contains several recommendations for reform of the Bills of Lading Act 1855, one of which would entitle the lawful holder of a bill of lading to assert contractual rights against the carrier irrespective of the passing of property and regardless of whether he had suffered loss himself. Although the issues posed by the 1855 Act are of prime concern to English lawyers because English law governs the vast majority of commodity imports into Europe, we are persuaded that replacement of the Act along the lines recommended in the joint report is urgently required in the national interest. We therefore hope that a draft Bill will be introduced to Parliament at an early date.

1.4 In the discussion paper entitled *Bulk Goods*² it was suggested that one law reform which might ease the difficulty experienced by those who buy goods which form part of a larger bulk would be amendment of section 16 of the Sale of Goods Act 1979. With the completion of their recommendations for replacement of the 1855 Act, both Commissions have returned to consider section 16 of the 1979 Act.

1.5 In addition, we are currently co-operating with the English Commission in dealing with a remit made to each Commission by the Department of Trade and Industry to examine the principles which should govern the effect of statutory and non-statutory controls on the fiduciary duties of professional and business activities, particularly in relation to financial services. Once the relevant issues have been identified, we shall consider whether we should issue a Scottish discussion paper. In our last report we intimated our decision to carry out a limited exercise on redress of unjustified enrichment arising from benefits conferred under error, with particular reference to the need to abolish or amend the error in law rule, and possible amendment of the law on benefits conferred under error of fact. Our work on this exercise has been assisted by a sight of preparatory papers of the English Commission which is engaged on a similar project.

Personal injuries: damages

1.6 In November 1990 we published Discussion Paper No 89 entitled *The Effect of Death on Damages*.³ This paper was prepared in response to a reference from the Secretary of State asking us to consider the case for amending the law of damages in Scotland having regard to the possibility that there may be an incentive inherent in the present law for a defender to postpone settlement of a claim until after the pursuer's death in order to minimise the amount of any compensation to be paid. The reference reflected a growing concern about the effects of the Damages (Scotland) Act 1976 on claims arising from terminal industrial disease, especially asbestos-related disease. Solatium awards for pain and suffering made to a dust disease victim can be as high as £30,000. But, under the present law, if the victim dies before his claim is settled or decree is pronounced in his favour, his entire claim for solatium dies with him. His widow and children may have their own independent claims for loss of society, but, even cumulatively, awards for loss of society can fall far short of the value of the solatium claim which dies with the victim. Preparation of the discussion paper was preceded by the issue of a questionnaire to various legal firms having a substantial experience of handling personal injury claims. The response from these firms, which was not as large as we had hoped for, revealed a substantial number of cases in which the victim died after an action had been raised on his behalf but before it had been disposed of by decree or settlement. In approximately three-quarters of these claims the pursuer was the victim of a dust disease. None of the firms responding to the questionnaire alleged that any deliberate tactical delay was practised by defenders. Nevertheless, our conclusion on this matter was that, even in the absence of any proved tactical delay, the current workings of the law gave defenders an inducement to resort to that tactic. Quite apart from that consideration, we were satisfied that the present capricious working of the law was by itself sufficient justification for exploring options for reform.

1. (1991) Law Com No 196, Scot Law Com No 130. See also paras 2.25 and 2.26.

2. Discussion Paper No 83. See also paras 2.25 and 2.27.

3. See also paras 2.47 and 2.48.

1.7 The first option for reform which was put forward in the discussion paper was to propose the survival of a claim for solatium, so far as it had accrued up until the date of his death, for the benefit of the victim's estate. As an alternative to, or in combination with, the first option we suggested as a second option a reformulation of the heads of non-patrimonial loss claimable by the immediate family of the deceased to include (a) loss of society, (b) grief and sorrow at the deceased's death, and (c) in cases where the deceased has undergone pain and suffering before his death, for the distress and anxiety experienced by members of his immediate family who contemplated that pain and suffering. Among the factors which persuaded us to put forward this second option was an awareness that section 1(4) of the 1976 Act describes a loss of society award as compensation for the loss of such non-patrimonial benefit as the relative might have been expected to derive from the deceased's society and guidance if he had not died. While there are judicial *dicta* which support the view that the statutory description is apt to describe all of the elements of a loss of society award set out in our second option, it is strongly arguable, on a proper construction of the sub-section, that a loss of society award is designed essentially to compensate the bereaved spouse and child for loss of the deceased's company in future years rather than to assuage their grief and sorrow. Even less is the sub-section apt to cover compensation for the distress experienced by members of the deceased's immediate family on contemplating the suffering that he endured before his death. If it is thought that these three elements should be included in a relative's claim for non-patrimonial loss, we appreciate the advantage of reformulating the elements of a loss of society claim to include them. Apart from the benefit of clarifying the law, there is a possibility that, once Parliament has specified the constituents of a loss of society claim, the court may decide to increase awards made under this head. Were that to happen, the gap between the amount of solatium awards payable to living pursuers and loss of society awards could be expected to narrow. We have, however, been made aware through consultation of a strong and widespread conviction in the legal profession that current levels of loss of society award are too low. In connection with the second option we have therefore sought views as to whether Parliament should lay down a tariff for all or some of the elements of non-patrimonial loss, or specify a minimum amount payable for loss of society.

1.8 Although the terms of our reference do not require us to concentrate exclusive attention upon the plight of dust disease victims, we have treated this exercise as a limited one. If we are satisfied that the current workings of the law can impose unacceptable hardship in cases where the claimant dies, and if that hardship can be mitigated by a comparatively straightforward reform, as is indicated by the first option, then our prime concern should be to recommend appropriate changes in the law without further delay. We therefore intend to complete our recommendations and to submit our report at an early date.

Law Commission's Fifth Programme

1.9 Recently we have considered the implications for our current work of the *Fifth Programme of Law Reform*¹ presented to Parliament by the English Commission. Two new programme items have been added under the heads of judicial review and damages. The Fifth Programme of Law Reform calls for an examination of the principles governing, and the effectiveness of, the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation. Among the matters to which specific consideration is to be given are bereavement damages and the principles relevant to awards of punitive or exemplary damages. After completing work upon our current reference we intend to consider whether a broader review of the law of damages for personal injuries is called for, and, if so, then, in the light of the specific points included in the English Commission's programme item, what aspects of our law require special attention.

1.10 Under the head of judicial review in its Fifth Programme the English Commission is to examine the procedures and forms of relief available by way of judicial review with particular regard to, among other things, the current position on time limits, and whether the rules as to standing require further development. Before the

1. Law Com No 200.

Fifth Programme was published we had examined our current work on administrative law. On a consideration of recent court decisions in judicial review applications, and on informal consultation with practitioners engaged in that area of work, we concluded that there was at present no urgent need to bring forward proposals for law reform. Among the factors which influenced this decision was the continuing development of Scottish administrative law by court decisions. As a general rule, we consider that when an area of law is under active development by the courts, statutory intervention is inopportune. We therefore resolved to delay until the spring of 1992 any further work on administrative law. The appearance of administrative law in the English Commission's Fifth Programme has not caused us to alter that decision because although time limits and standing have given rise to some difficulty in Scotland, the courts are currently directing attention to these matters. In addition, partly because the origins and development of judicial review in the two jurisdictions are markedly different, some of the particular matters specified in the English Commission's Fifth Programme have so far given no cause for concern in Scotland.

Property Law

1.11 In our report on *The Passing of Risk in Contracts for the Sale of Heritable Property*,¹ which was published in October 1990, we recommend abolition of the common law rule which provides that, subject to certain exceptions, when heritable property is sold the risk of damage to or destruction of that property passes to the purchaser not when he acquires ownership of the property, but at the date, which may be much earlier, when there is a binding contract for sale. In our opinion, that common law rule does not accord with the reasonable expectations of the ordinary person and tends to encourage double insurance. We therefore recommend the introduction of a new statutory rule, the application of which parties are free to vary or exclude by agreement, whereby the risk of accidental destruction of or damage to the property does not pass to the purchaser until he is entitled to take possession, or if and when he takes possession without the seller's consent. Further, with a view to shortening and simplifying missives we recommend that if the property is destroyed or substantially damaged without fault of either party while it is at the risk of the seller, the contract should be regarded as frustrated as from the date of the destruction or damage.

1.12 During the year under review, we completed preparation of our discussion paper on *Abolition of the Feudal System*.² One of the measures proposed in the paper is redemption of all existing feu duties according to a prescribed timetable. On a date to be specified redemption sums will become personal debts due by former feuars to former superiors. On the expiry of five years after the specified date these debts will cease to be recoverable. We do not consider that abolition of the feudal system necessarily requires cancellation of existing real burdens. In our opinion real burdens running with land which are enforceable against successive proprietors are on the whole beneficial. We therefore put forward two options for reform whereby real burdens would remain enforceable, but not by superiors as such. Under the first option, a neighbouring proprietor would be entitled to enforce a real burden on proof that his property met a relevant proximity test and that he was suffering detriment as a consequence of his neighbour's failure to comply with the real burden. The second option would place former superiors in the same position as that of non-superiors who, in conveying property, had created a real burden. Under this option the enforcing proprietor would require to prove that he had the requisite title and interest to enforce the real burden. If either option is accepted, an existing superior will lose his right of enforcement unless he is able to satisfy the appropriate qualifying conditions. In relation to other heritable rights, such as salmon fishing and minerals, forming part of a superiority title, we propose that the abolition of the feudal system will not prejudice the present system of ownership and transmission of such rights. In addition, the abolition of the feudal system will not prejudice rights and benefits derived from the Crown by virtue of the paramount superiority.

1. (1990) Scot Law Com No 127. See also para 2.38.

2. Discussion Paper No 93.

Family law 1.13 In family law all three of our current projects have made good progress and are at an advanced stage. In October 1990 we published our discussion paper entitled *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property*.¹ The paper posed the following salient questions. Should the main parental rights of custody, access and legal representation be defined? Should the law confer parental rights and responsibilities upon the father of a child even although he has never been married to the mother? If yes, should there be any exception to the general rule? Should the law require consideration to be given to the wishes of a child, having regard to the child's age and understanding, by a person about to make a major decision in the exercise of parental rights? Should a parent's existing limited right to administer corporal punishment to his or her child be retained or abolished? The paper also contains proposals, some of them suggested by the provisions of the (English) Children Act 1989, for restating and modernising the rules on the operation of guardianship. In addition, a less cumbersome scheme is proposed for regulating the administration of children's property.

1.14 The formal consultation which followed on publication of our discussion paper on the *Effects of Cohabitation in Private Law*² was supplemented by a public opinion survey and by public meetings. Our assessment of the responses to the main proposals made in the discussion paper confirms our view that there is a strong case for introducing limited reforms into our private law to enable certain legal difficulties faced by cohabiting couples to be overcome and to enable certain perceived hardships to be remedied. We hope to complete our recommendations on this subject before the end of 1991.

1.15 Good progress has been made during the year under review on *Pre-Consolidation Reform in Family Law*. A draft report has been approved subject to a consideration of research being undertaken for us by the Central Research Unit into recent experience of judicial separation as a remedy.

1.16 We believe that it would be more convenient for the public were the reports and draft Bills relating to these three projects to be amalgamated in a single document. Such a composite report could be an aid to implementation. Although it may be expedient to introduce separate Bills to Parliament, a report covering all three projects should make it easier for the reader to test the coherence of our recommendations for reform in this branch of the law. If the recommendations issuing from these three family law projects are implemented, the next stage will be to consider the scope of family law consolidation. Our current preference is for a consolidation which would incorporate the public as well as the private aspects of Scottish child care law.

Evidence 1.17 A substantial amount of time and resources has been devoted during the past year to our work on *Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*.³ Nearly all those who submitted comments to our discussion paper on this subject agreed that the rule against hearsay should not be abolished, but that the existing exceptions to the rule should be examined to see whether they should be clarified, extended or improved. In examining the existing exceptions we have proceeded upon the basis that the rule is justified in so far as it prevents a jury from considering a secondhand account of an event when a more reliable firsthand account is available. But if there is a secondhand account more likely to be reliable than a firsthand account, or if there is no firsthand account, and a jury, properly directed, could readily assess its reliability, the rule loses its justification and there is a case for reform. Overall, we seek to maintain the balance referred to by Lord Reid in his Maccabaeen Lecture of ". . . preserving and developing a coherent body of legal principle, while at the same time going as far as we can to satisfy the modern pragmatic reasonable man".

Requests for advice 1.18 During the year under review we have responded informally to various requests made by Government Departments for advice. Among the topics upon which we have

1. Discussion Paper No 88.

2. Discussion Paper No 86.

3. Discussion Paper No 77. See also paras 2.15 and 2.16.

given advice have been proposed amendments to the Law Reform (Miscellaneous Provisions) (Scotland) Bill 1990, draft directives of the European Communities Commission, and proposals made by the Department of Trade and Industry for improved protection of consumers. Although we do not think it appropriate to give a complete list of all the topics covered, we think it right to point out that they have added appreciably to the total workload of the Commission.

Implementation of reports

1.19 In our last report we pointed out that the number of our recommendations awaiting implementation had increased substantially. We are glad to record that since then the Age of Legal Capacity (Scotland) Bill, which implements our report on the *Legal Capacity and Responsibility of Minors and Pupils*,¹ has passed through all its stages in both Houses of Parliament. For this we are grateful to Sir Nicholas Fairbairn QC MP who introduced the Bill in the House of Commons and to Lord Macaulay of Bragar QC for supervising its progress through the House of Lords. We are also glad that sections 56 to 60 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, whereby a child may give evidence in criminal proceedings by means of a live television link, have implemented certain of the recommendations in our report on the *Evidence of Children and Other Potentially Vulnerable Witnesses*² and that section 70 implements in part recommendations in our report on *Evidence: Blood Group Tests, DNA Tests and Related Matters*.³ We regret that it was found necessary during the Parliamentary progress of that Act to drop the clause designed to implement our report on *Reform of the Ground for Divorce*.⁴

1.20 Unfortunately, the number of reports which have not been implemented remains substantial, and within the current year several more reports are likely to be published. Among the reports awaiting Parliamentary consideration are those relating to the *Requirements of Writing, Civil Liability—Contribution, Recovery of Possession of Heritable Property, Prescription and Limitation of Actions (Latent Damage and Other Related Issues), Succession and The Passing of Risk in Contracts for the Sale of Heritable Property*. Anxiety over delays in implementation was expressed by the Chairman of the English Commission, Sir Peter Gibson, in his recent Denning Lecture and the matter was raised by Lord Morton of Shuna during the passage of the Age of Legal Capacity (Scotland) Bill through the House of Lords. In presenting this report to your Lordship we respectfully suggest that those responsible for the management of Parliamentary business would better serve the public interest were they to secure earlier consideration of draft Bills emanating from the Law Commissions as the bodies with the statutory responsibility to make recommendations for law reform.

1. (1987) Scot Law Com No 110.
2. (1990) Scot Law Com No 125.
3. (1989) Scot Law Com No 120.
4. (1989) Scot Law Com No 116.

Part II Progress of law reform projects

2.1 The present position in each of our current law reform projects is set out in more detail in this Part of our report. The main subject headings are presented in alphabetical order. Programme subjects¹ are denoted by the use of an asterisk.

Administrative Law

2.2 In previous annual reports we have recorded the terms of the reference² and the work which we have been doing. Work has continued during the past year notwithstanding both the need to devote our resources to other priorities and the complex and wide-ranging issues involved in this reference. This work has had to be restricted to maintaining particulars of significant Court of Session judicial review cases as they have arisen and considering the implications of the decisions. While we regret not having been able to advance our work more, it may be that a number of issues—in particular the proper scope of judicial review in Scotland and matters such as title and interest to sue—will be clarified by judicial decisions. It is apparent that in the last 25 or so years there has been a remarkable development in the activity of the Superior Courts in administrative law, particularly since the procedural reforms of 1977 in England and Wales and of 1985 in Scotland (following the implementation of the recommendations of Lord Dunpark's Working Party on Procedure for Judicial Review of Administrative Action).

2.3 As recorded above³ the Law Commission has now been able, with the appointment of a new Commissioner, to submit to the Lord Chancellor a Fifth Programme of Law Reform (Law Com No 200; June 1991). One of the two new items (Item 10) relates to judicial review being the "examination of the mechanism of judicial review, and the connected subject of statutory appeals and applications to quash made to the High Court from inferior courts, tribunals and other bodies." We have noted with interest that the main focus of the Law Commission's work will be on the effectiveness of the present procedural mechanisms in England and Wales and it is not proposed "to look at the substantive grounds relevant to the application for relief as this is a field in which the substantive law remains most appropriately the subject of judicial development". As mentioned already,⁴ we have decided that we will delay temporarily work on this project until the spring of 1992 when we will again consider whether it would be appropriate at that time to resume work on this topic.

2.4 We have referred in our previous annual reports to the research project being carried out at the University of Edinburgh⁵ on the impact of decisions of the sheriff on administrative authorities subject to his statutory powers of review. This research project has not yet been completed but we expect that the results of the research will be available to us during the course of the next twelve months.

Criminal Law

General 2.5 Our work in the criminal field derives from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and references under section 3(1)(e) of that Act.

1. First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29; Fourth Programme, (1990) Scot Law Com No 126.

2. (1988) Scot Law Com No 114, para 2.2.

3. See para 1.9.

4. See para 1.10.

5. By Mr Gavin Little, now Lecturer at the University of Dundee.

Forfeiture and confiscation

2.6 Following a reference from the Secretary of State for Scotland asking the Commission to review the law in Scotland in relation to:

- (a) the forfeiture of instruments used in the commission of crime; and
- (b) the confiscation of the proceeds of crime,

we published a discussion paper in 1989.¹ The question of the confiscation of the proceeds of crime is of international significance. It has been given a high priority by Parliament as a measure to combat serious crime. We hope to submit to the Secretary of State later this year a report giving our recommendations and a draft Bill for reforming the law of Scotland in the two areas mentioned above. We have found this to be a particularly difficult area but we have obtained much assistance from the many comments received on consultation and from considering relevant legislation both in the United Kingdom and in other jurisdictions.

Diligence*

(Second Programme, Item 8)

2.7 We have continued to make progress in our work on diligence. We have had further valuable discussions with the Joint Committee of the Law Society of Scotland and the Society of Messengers-at-Arms and Sheriff Officers on issues arising from Discussion Paper No 78 on *Adjudications for Debt and Related Matters*.²

2.8 In November 1990, we published our Discussion Paper No 90 on *Extra-territorial Effect of Arrestments and Related Matters* which is reported on at paragraph 2.35 below under the head of Private International Law.

2.9 Our Discussion Paper No 87 on *Statutory Fees for Arrestees* published in May 1990 sought views on provisional proposals enabling persons receiving arrestments of moveable property and funds other than earnings to charge statutory fees as recompense for the expense incurred in complying with the arrestment. These proposals elicited a variety of responses from interested bodies and on the basis of their comments we have made very considerable progress in preparing a final report on the topic.

2.10 Completion of this report has, however, had to be deferred because of difficulties experienced in obtaining reliable statistics on the nature and scale of arrestments. As forecast in our last Annual Report, the Central Research Unit of the Scottish Office carried out a survey of arrestments served by officers of court (messengers-at-arms and sheriff officers) in the period September 1990 to February 1991 inclusive based on data provided by those officers. Unfortunately when the results of the survey were compared with statistics provided by the Committee of Scottish Clearing Bankers representing the four Scottish clearing banks, a very considerable discrepancy was identified. Accordingly, a new survey has had to be arranged but this time with special checking procedures designed to enable the source of any discrepancy to be identified. A pilot survey was conducted on 27 to 31 May 1991 which proved successful, and the full survey will be conducted in the month of July 1991. If this survey is successful, we shall give priority to the completion and submission of our report as soon as possible thereafter.

2.11 We have commenced work on the preparation of a discussion paper on inhibitions and on a survey of inhibitions registered in the Register of Inhibitions and Adjudications in 1990, based on data provided by the Department of the Registers. Unfortunately, work on the discussion paper has had to be suspended to divert staff resources to other more pressing commitments, but it is hoped to resume work on the discussion paper in the next reporting year.

1. Discussion Paper No 82—Forfeiture and Confiscation.

2. This is a continuation of the discussions referred to in our last Annual Report, (1990) Scot Law Com No 128, para 2.6.

*Denotes programme subject.

2.12 Progress on the preparation of a report following Discussion Paper No 78 on *Adjudications for Debt and Related Matters*; Discussion Paper No 79 on *Equalisation of Diligences*; Discussion Paper No 84 on *Diligence on the Dependence and Admiralty Arrestments*, and the Consultation Paper on *Arrestments of ships securing claims against demise charterers*,¹ cannot be made until the discussion paper on inhibitions and a discussion paper on miscellaneous diligence topics have been published.²

Evidence*

(First Programme, Item 1)

Evidence of children and other potentially vulnerable witnesses

2.13 In our last annual report³ we referred to the publication of our Report on *The Evidence of Children and Other Potentially Vulnerable Witnesses*.⁴ We there recommended that the Lord Justice General should be invited to issue to all judges a memorandum of guidance as to the exercise of the judge's discretionary powers, where a child was to give evidence by conventional means in open court, to put the child at ease while giving evidence and to clear the court of persons not having a direct involvement in the proceedings.⁵ In July 1990 there was issued to all judges a Memorandum by the Lord Justice General on Child Witnesses which took account of that recommendation.

2.14 Our Report also recommended legislation which would enable the court in the exercise of its discretion to permit the use of pre-trial depositions, screens or closed-circuit television where evidence was to be given by a child or an adult witness who would be likely to suffer undue distress or anxiety if required to give evidence by conventional means. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 implemented our recommendations in part, by making provision as to the giving of evidence by a child through a live television link,⁶ the criminal jurisdiction of the sheriff court⁷ and the definition of "child" and "court".⁸ The Act includes two provisions which were not derived from our Report, one concerning the transfer from one sheriff court to another of a case in which a child's evidence is to be given through a live television link,⁹ and the other concerning evidence of the prior identification of the accused by a child who gives evidence by that means.¹⁰

2.15 Our Report further recommended legislation as to the admissibility of certain prior statements of witnesses as evidence of the facts stated in them. In our last annual report¹¹ we indicated that we had agreed to reconsider that matter. We propose to do so in our forthcoming Report on *Hearsay and Related Matters in Criminal Proceedings*, to which we refer below.¹²

Hearsay and related matters in criminal proceedings

2.16 In our last annual report¹³ we indicated that we had considered the comments received from consultees in response to our Discussion Paper No 77—*Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*. Work is now in hand on the preparation of a report. As we have mentioned above,¹⁴ the Report will include recommendations as to the admissibility of certain prior statements of witnesses as evidence of the facts stated in them.

1. See our last Annual Report, (1990) Scot Law Com No 128, paras 2.6-2.8.

2. See our annual report for 1986-87 (1987) Scot Law Com No 109, paras 2.9-2.12.

3. (1990) Scot Law Com No 128, para 2.13.

4. (1990) Scot Law Com No 125.

5. Recommendations 1, 2 (paras 2.3-2.6, 2.12-2.14).

6. 1990 Act, s 56, derived from our draft Bill, cls 3, 4 and recommendations 12 (paras 4.28-4.33), 15 (paras 4.38-4.42).

7. 1990 Act, s 60, derived from draft Bill, cl 10 and recommendation 14 (paras 4.35-4.37).

8. 1990 Act, s 59, derived from draft Bill, cl 11 and recommendations 13 (para 4.34), 16 (para 4.40).

9. 1990 Act, s 57.

10. 1990 Act, s 58.

11. (1990) Scot Law No 125, para 2.13.

12. See paras 1.17 and 2.16 below.

13. (1990) Scot Law Com No 128, para 2.14.

14. Para 2.15 above.

*Denotes programme subject.

Confidentiality in family mediation

2.17 Our last annual report¹ mentioned that we had started work on a discussion paper which would investigate the question whether confidentiality should attach to communications between a conciliator and the parties to proceedings relating to the custody of, or access to, children. In April 1991 we published Discussion Paper No 92 on *Confidentiality in Family Mediation*. This paper appeared about one year after the coming into force of Rules of Court empowering the court in actions concerned with the custody of, or access to, a child to refer the parties to conciliation services. During the passage of the Law Reform (Miscellaneous Provisions) (Scotland) Bill 1990 through Parliament an unsuccessful attempt was made to add by amendment a provision whereby anything communicated to a conciliator in connection with conciliation procedures should be privileged information and inadmissible in any proceedings under the Divorce (Scotland) Act 1976 without the consent of both parties and of the conciliator. Research which we had carried out before that amendment was put down did not satisfy us that it was desirable to grant a blanket privilege in respect of information communicated in conciliation procedures. Subsequent research has convinced that our preliminary caution was justified. The issue posed is a narrow one, and its resolution depends upon achieving a sensible balance between two important principles of public policy. In the first place it is essential to the success of conciliation procedures that those participating should have a frank and open discussion, and that arrangements eventually agreed should reflect all relevant facts. The other principle, one that is clearly expressed in section 3(2) of the Law Reform (Parent and Child) (Scotland) Act 1986, not only requires the court to regard the welfare of the child involved as the paramount consideration, but to make no order relating to parental rights unless satisfied that to do so would be in the child's interests. Our review of the relevant law in certain other jurisdictions, particularly in California where the courts have longer experience of conciliation procedure, has confirmed that a privilege relating to conciliation must be qualified, and that in certain instances a conciliator's duty of care can extend not merely to the child but also to one or other of the parties to the conciliation process. We recognise that in the vast majority of conciliation procedures the granting of an unqualified privilege would be wholly beneficial and without risk. Our concern is that in the very small minority of cases where a conciliator obtains information alerting him or her to a danger affecting the child or one of the parties, a strict insistence on confidentiality could have unacceptable consequences. Consultees have been asked to respond to this paper by the end of September 1991. Thereafter we shall analyse the comments received and prepare a report for submission to you in due course.

Family Law*

(Second Programme, Item 14)

**Law of Children
(incorporating legal capacity
of minors and pupils)**

2.18 Our last annual report² mentioned that our Report on *Legal Capacity and Responsibility of Minors and Pupils*³ was submitted to you on 1 October 1987 and published on 16 December 1987. A Private Member's Bill to implement our report was introduced in 1989 but failed to make progress because of lack of time. Accordingly, we were delighted when the Bill was re-introduced in February 1991 and as noted above⁴ it passed all its Parliamentary stages and was duly enacted in July 1991.

2.19 Our discussion paper on *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property*,⁵ which was referred to in our last annual report,⁶ was published in October 1990 with a request for comments by the end of February 1991. A larger than usual response has been received which will be of great assistance in formulating our final policy. For our plans in relation to reporting please see paragraph 2.21 below.

1. (1990) Scot Law Com No 128, para 2.15, under the heading "Privilege and family conciliation".

2. (1990) Scot Law Com No 128, para 2.16.

3. (1987) Scot Law Com No 110.

4. Para 1.19.

5. Discussion Paper No 88.

6. (1990) Scot Law Com No 128, paras 1.18 and 2.17.

*Denotes programme subject.

2.20 The Child Care Law Review,¹ the review body set up by the Secretary of State for Scotland to identify options for change in child care law, published their report towards the end of 1990. It is hoped that their report, together with the report which will follow our discussion paper on *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property*² (and related discussion papers) will constitute a significant contribution to the modernisation and improvement of Scottish child law.

**Pre-consolidation reforms—
The effects of cohabitation in
private law**

2.21 Our intention, as referred to above,³ is to bring together the subject-matter of our *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property* discussion paper⁴ with the matters dealt with in our discussion papers on *Pre-Consolidation Reforms*⁵ (published in March 1990) and *The Effects of Cohabitation in Private Law*⁶ (published in May 1990) in one report which it is hoped will be published in late 1991.

Obligations*

(First Programme, Item 14)

Corporeal moveables 2.22 No further work is being undertaken in this area for the time being.

The postal rule 2.23 In our Report on *Requirements of Writing*⁷ we indicated that we had not covered in the report the law on the communication of offer and acceptance in order to constitute a contract. We further indicated that it was our intention to consult separately on the questions whether the so-called "postal rule" (that posting of an acceptance may complete the contract) should be replaced by a rule requiring an acceptance to be communicated to the offeror before the contract is complete, and in that connection to discuss the implications of modern methods of communication for the law on the constitution of contracts. Until recently it has been necessary for us to give priority to other projects. We have now started work on this topic, however, and we propose to publish a discussion paper in due course.

**Rights in security over
moveable property** 2.24 The report on the *Review of Security Interests in Property* prepared by Professor A L Diamond was published on 27 January 1989 and the Department of Trade and Industry subsequently sought comments on certain of the proposals for reform put forward in that report. On 24 April 1991 Mr Peter Lilley, Trade and Industry Secretary, reported in the House of Commons on that consultation. A clear majority of those representing interests governed by English law argued against major reform and the Government accordingly decided not to accept the recommendations in Part II of the Diamond report for England and Wales. In respect of Scotland, however, there was a substantial call for action to facilitate the granting of security interests in Scotland. The Department is accordingly preparing a Bill introducing new forms of security over moveables into Scots law and this will provide the basis for a further period of consultation during the course of next year. We will continue to keep an interest in this matter and will, if appropriate, respond to the consultation.

Carriage of goods by sea 2.25 A joint report with the Law Commission for England and Wales on *Rights of Suit in Respect of Carriage of Goods by Sea*⁸ was submitted to you on 15 February 1991. This report, which made recommendations for reform of the Bills of Lading Act 1855 followed publication of our Discussion Paper No 83—*Bulk Goods* in August 1989.⁹ That discussion paper also made provisional proposals with regard to reform

1. Referred to in para 2.17 of our last annual report (1990) Scot Law Com No 128.

2. Discussion Paper No 88.

3. Para 1.16.

4. Discussion Paper No 88.

5. Discussion Paper No 85, referred to in our last annual report (1990) Scot Law Com No 128 at para 1.20.

6. Discussion Paper No 86, referred to in our last annual report (1990) Scot Law Com No 128 at para 1.19.

7. (1988) Scot Law Com No 122, para 1.3.

8. Law Com No 196, Scot Law Com No 130.

9. This item was dealt with in our last report under the head of "Other obligations topics", para 2.24.

*Denotes programme subject.

of section 16 of the Sale of Goods Act 1979.¹ We hope to be in a position to submit a separate joint report in respect of section 16 of the Sale of Goods Act 1979 shortly.

2.26 The joint report on *Rights of Suit in Respect of Carriage of Goods by Sea* included recommendations that:

- (a) Contractual rights may be asserted only by the lawful holder of a bill of lading.
- (b) Contractual rights may be passed by indorsement *after* delivery of goods in accordance with a previous arrangement.
- (c) Liability under the contract will attach to a person asserting rights of suit under a bill of lading or otherwise against the carrier.
- (d) The consignee or nominated deliverer under a sea waybill should be entitled to sue on the contract of carriage.
- (e) In the case of a ship's delivery order, the person entitled to delivery should be entitled to assert contractual rights against the carrier.

Sale and supply of goods

2.27 As we indicated in our last annual report,² in conjunction with the Law Commission for England and Wales, we have embarked on a further consultation exercise in connection with provisional proposals for the reform of section 16 of the Sale of Goods Act 1979. We have examined the possibility of amendment based upon section 2.105 of the United States Uniform Commercial Code. The effect of this amendment would be to enable a purchaser of a quantity of goods forming part of an identified bulk to acquire a property interest in the goods (by becoming a part-owner of the bulk) before the bulk is actually divided up. At present section 16 usually prevents the purchaser acquiring any property interest in the goods until actual delivery. Our further consultation among English and Scottish insolvency practitioners is almost completed and we hope that it will be possible to submit a joint report during the course of next year.

Supersession of missives

2.28 Work is again proceeding on this topic and we hope to publish a short discussion paper this year.

**Unjustified enrichment:
recovery of benefits conferred
under error**

2.29 In March 1990, the Lord Chancellor, Lord Mackay of Clashfern, asked the Law Commission to examine the law relating to payments made but not lawfully due, and in particular the common law rule that payments made under a mistake of law are irrecoverable.³ This rule has been the subject of criticism by the courts and legal commentators for some years. It has the effect, for example, that where one person has paid money to another in the erroneous belief that it is due, English law does not normally give him the right to recover the money after he has discovered his error. The same rule was introduced in Scots law from English law as a result of *obiter dicta* in the House of Lords in 1830 and 1831,⁴ which were followed in subsequent Scots cases culminating in *Glasgow Corporation v Lord Advocate* in 1959.⁵

2.30 Against this background, it seemed to us highly desirable to prepare a discussion paper on the error in law rule in Scots law partly because of the English origin of the Scots rule, and partly because it seems to us that the Scots and English rules on this topic should be in harmony, especially in such areas as recovery of rates and taxes paid in error and mistaken payments to public authorities or under public law statutes, where there are constitutional reasons for maintaining cross-border harmonisation of legal rules.

2.31 We therefore decided to examine this topic under our Programme Item on obligations and asked Mr D R Macdonald, Lecturer in the Department of Law, University of Dundee, to prepare a paper considering whether the common law rule

1. See para 1.4 above.

2. (1990) Scot Law Com No 128, para 2.24.

3. This was a reference under s3(1)(e) of the Law Commissions Act 1965. In July 1991 the Law Commission published Consultation Paper No 120 on *Restitution of Payments made under a Mistake of Law*.

4. *Wilson and McLellan v Sinclair* (1830) 4 W and S 398 at p 409; *Dixon v Monkland Canal Co* (1831) 5 W and S 445 at p 451.

5. 1959 SC 203 (First Division).

that benefits conferred under error of law are not recoverable should be abolished or amended, and to consider also whether the law relating to error of fact as a ground of the redress of unjustified enrichment should be amended, or its scope clarified, by statute. The scope of this study is wider than the Law Commission's terms of reference (which is confined to payments of money) since it covers benefits in kind (moveable property other than money, heritable property, services and useful expenditures) as well as payments of money, and such problems peculiar to Scots law as the question of whether or in what circumstances error in fact is an essential element in recompense, on which there are conflicting judicial dicta and much uncertainty. We hope to publish a discussion paper on this topic next year.

2.32 We have also been exploring the possibility of issuing a comprehensive research paper on the law of unjustified enrichment and *negotiorum gestio*. The lack of any Scots monograph on this subject is hampering the proper development of the distinctive Scots law on this subject and, incidentally, presents many difficulties for practitioners. Some preliminary work on this project has been undertaken.

Prescription and Limitation of Actions*

(First Programme, Item 3)

Prescription and limitation of actions (latent damage)

2.33 As we mentioned in last year's report¹ a consultation paper on *The Effect of the Execution of Diligence on the Operation of Prescription* was circulated to a limited number of consultees. That consultation has been completed and we submitted our report to you on 6 December 1990. The report, although we did not have it printed and published in the normal way, was laid before Parliament by you on 20 March 1991. We have made copies of it available to all consultees and to interested parties and to anyone else who has requested a copy.

Private International Law*

(Third Programme, Item 15)

Choice of law rules in tort and delict

2.34 As already mentioned in paragraph 1.2 above, our joint report with the Law Commission for England and Wales—*Choice of Law in Tort and Delict*²—was submitted to you on 12 November 1990 and published on 11 December 1990. This report followed a consultation paper on *Private International Law: Choice of Law in Tort and Delict* published in 1984.³

Extra-territorial effect of arrestments

2.35 As mentioned at paragraph 2.8 above, in November 1990 we published our Discussion Paper No 90 on *Extra-territorial Effect of Arrestments and Related Matters*. This deals with the matters explained more fully in our last Annual Report,⁴ and in particular with the private international law on the validity of arrestments, and procedures for protecting arrestees from double jeopardy. We are still awaiting comments from some important bodies on the provisional proposals in that paper.

Property Law*

(Fourth Programme, Item 16)

Abolition of the feudal system

2.36 In July 1991, just after the formal end of our report year, we published Discussion Paper No 93 on *Abolition of the Feudal System*. This seeks views on provisional proposals for the abolition of feudal tenure and its replacement by a system of absolute ownership. Consultees were invited to comment on two alternative approaches to the future enforcement of real burdens. In view of the far-ranging consequences of

1. (1990) Scot Law Com No 128, para 2.26.

2. Law Com No 193, Scot Law Com No 129.

3. Working Paper No 87, Consultative Memorandum No 62.

4. See (1990) Scot Law Com No 128, para 2.28.

*Denotes programme subject.

our proposals and the importance of the topic we are allowing a lengthy period for consultation purposes and would not expect to be in a position to submit our report to you for some time.

Law of the tenement

2.37 As we indicated in our last annual report¹ we published a discussion paper, No 91—*Law of the Tenement*—in December 1990, with provisional proposals for a statutory statement of an updated law of the tenement. In the paper we maintain that existing common laws regulating tenements are uncertain and out-moded. We propose a new law of the tenement which should apply to any tenement coming into existence after the appointed day, except in so far as the titles of the tenement regulate any matter covered by the new law. If all the proprietors of a tenement which existed prior to the appointed day agree that the new law should apply, they would be free to adopt that law by formal agreement. Failing unanimity among the proprietors, those favouring adoption of the new law should be entitled to apply to the Lands Tribunal for Scotland for an order making that law applicable. Under the general rules of the new law, the common parts of a tenement would be owned in common by all the proprietors benefiting from those parts, these owners bearing the cost of maintenance in proportions calculated on the basis of floor areas. Among the more important specific rules proposed, the foundations, structural walls, columns, common areas and roofs should be in the common ownership of, and maintained by, all proprietors in the tenement. Parts not benefiting all proprietors, such as pipes, tanks, service systems, chimney stacks and lifts would be in the common ownership of, and maintained by, the proprietors entitled to use them. Provision is also proposed for majority decisions to bind all the proprietors for securing the execution of essential maintenance and repair work. Failing a majority decision in favour of action, it would be open to a minority of proprietors to seek an order from the Lands Tribunal requiring that essential maintenance work be carried out and become the responsibility of all affected proprietors. We anticipate that the main proposals set out in the discussion paper may have to be modified in the light of consultation. In preparing the paper our main concern has been to propose simplification of the relevant legal concepts. To this end we have placed greater emphasis on common ownership than on common interest. We seek help from consultees principally on the practical aspects of tenement living in the hope that the resulting recommendations will take the form of clear-cut comprehensive provisions based on a simple and sensible legal foundation. We have received and are still receiving comments on our proposals and hope to consider them soon with a view to making our recommendations which will be submitted to you in a report in due course.

**Passing of risk in contracts
for the sale of heritable
property**

2.38 Our report on *The Passing of Risk in Contracts for the Sale of Heritable Property*² was submitted to you and laid before Parliament by you on 18 October 1990. In the report we recommend abolition of the common law rule which provides that, subject to certain exceptions, when heritable property is sold the risk of damage to or destruction of that property passes to the purchaser not when he acquires ownership of the property, but at the date, which may be much earlier, when there is a binding contract for sale. In our opinion, that common law rule does not accord with the reasonable expectations of the ordinary person and tends to encourage double insurance. We therefore recommend the introduction of a new statutory rule, the application of which parties are free to vary or exclude by agreement, whereby the risk of accidental destruction of or damage to the property does not pass to the purchaser until he is entitled to take possession, or if and when he takes possession without the seller's consent. Further, with a view to shortening and simplifying missives we recommend that if the property is destroyed or subsequently damaged without fault of either party while it is at the risk of the seller, the contract should be regarded as frustrated as from the date of the destruction or damage. Although the report deals with a very narrow area of law, it is important, and our proposals were well received on consultation. We hope, therefore, that legislation on these matters will be possible at an early date.

1. (1990) Scot Law Com No 128, para 2.29.

2. Scot Law Com No 127.

*Denotes programme subject.

- Residential long leases** 2.39 We are in course of preparing a discussion paper covering the topic of residential long leases. This discussion paper will consider the possibility of tenants of residential property held on certain long leases being given the right to convert their interests into rights of absolute ownership on certain conditions, including payment of compensation. We hope to be able to publish this discussion paper during the current year.
- Boundary walls** 2.40 We are in the course of preparing a discussion paper on the rights of adjoining properties in boundary walls. We hope to publish the paper during the current year.

Succession*

(Second Programme, Item 7)

2.41 Our Report on *Succession*¹ was submitted to you in November 1989 and was published on 25 January 1990. As stated in our last annual report² the report covers a wide variety of topics which if implemented will, we think, bring this area of law up-to-date. We hope, therefore, that legislation on this matter will be possible at an early date.

Other Matters

Multi-party actions 2.42 Work is continuing on your reference requesting us to consider whether more effective remedies should, and could, be introduced where a number of persons have the same or similar rights. (In previous Annual Reports this matter has been referred to as “class actions”).

2.43 We have noted in particular recent developments in the handling of claims and subsequent litigation arising out of mass disasters (such as the Piper Alpha Oil Rig explosion in 1988) and defective goods (such as tranquilliser drugs). These developments include the formation of groups of solicitors to co-ordinate the pursuing of claims. We have noted also that in England and Wales procedural difficulties in bringing group actions have prompted the Supreme Court Procedure Committee to issue a guide (Guide for Using Group Actions; published May 1991) to the way in which existing court procedures can be adapted to meet these new demands. Also, there have been suggestions of new ways in which the cost of multi-party litigation might be met. (For example, the Lord Chancellor’s Department Legal Aid Consultation Paper, issued in June 1991, and the Scottish Office Home and Health Department Consultation Paper issued in July 1991, invite views on the possible introduction of a contingency legal aid fund, embodying the principle of “winners subsidise losers”). In the light of these developments we incline to the view that rather than attempting to devise relatively complicated and novel procedures to cope with the difficulties of multi-party actions it may be preferable to seek to devise more modest proposals based on facilitating joint actions where claims arise as a result of a similar wrong or breach of contract.

Fiduciary duties and regulatory bodies 2.44 As we mentioned in our last annual report³ we received in April 1990 from the Department of Trade and Industry a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

“Certain professional and business activities are subject to public law regulation by statutory or self-regulatory control. The Scottish Law Commission is to consider the principles which should govern the effect of such controls on the fiduciary and analogous duties of those carrying on such activities, and to make recommendations. The inquiry will consider examples from differing areas of activity but will be with particular reference to financial services.”

1. Scot Law Com No 124.

2. Para 2.31.

3. Para 2.43.

*Denotes programme subject.

The Law Commission for England and Wales have received a similar reference, and we are co-operating with them. A questionnaire seeking to identify the relevant issues has been produced and has been circulated to a number of interested parties. The responses to the questionnaire are being analysed with a view to producing a discussion or consultation paper which we hope to issue during the course of next year.

Floating charges and receivers

2.45 Further work on this topic has been suspended pending the action to be taken following Professor Diamond's Report on the *Review of Security Interests in Property* (see paragraph 2.24).

Judicial factors, powers of attorney and guardianship of the incapable*

2.46 This item in the Fourth Programme has replaced two separate law reform proposals made to us by the Law Society of Scotland on judicial factors and powers of attorney¹ and expanded those proposals by adding guardianship. Within this enlarged field of enquiry we have given priority to the management and control of the personal welfare and financial affairs of adults who lack the mental capacity to look after themselves. A wide-ranging discussion paper on mentally disabled adults has been prepared. Among the many topics discussed in the paper are:

- (a) Personal guardianship of mentally disabled adults. Amendments are proposed to improve the position of tutors-dative and guardians appointed under the Mental Health (Scotland) Act 1984. An alternative approach of replacing tutors and guardians by a new, more flexible, system of personal guardianship is also proposed.
- (b) Medical treatment and non-therapeutic research involving mentally disabled patients and the removal of organs for transplantation from them.
- (c) Management of the financial affairs and property of mentally disabled adults. A new system of financial managers with powers tailored to the individual adult's situation is proposed to replace curators *bonis*. Other matters considered are trusts for administration, management by hospital authorities of in-patient's money, obtaining access to bank accounts and similar items without legal proceedings, and public management of the estates of mentally disabled adults.
- (d) Powers of attorney enabling an attorney to make decisions in both the personal welfare and financial fields after the granter's incapacity. Various safeguards are suggested to minimise abuse.
- (e) Which body should have jurisdiction to appoint people to deal with the personal welfare and financial affairs of mentally disabled people. Courts, new tribunals, or new mental health hearings along the lines of children's hearings are considered.
- (f) Capacity of mentally disabled people to make financial or personal welfare decisions, make a will or get married. The effect of the appointment of a guardian, curator or financial manager on such capacity is considered.

It is anticipated that the discussion paper will be published by September this year.²

Personal injuries: damages

2.47 As mentioned in our last annual report,³ we are working on a reference from the Secretary of State for Scotland under section 3(1)(e) of the Law Commissions Act 1965:

"To consider the case for amending the law of damages in Scotland having regard to the possibility that there may be an incentive inherent in the present law for a defender to postpone making settlement or reaching proof until after the death of the pursuer in order to minimise the amount of any compensation to be paid."

2.48 On 16 November 1990 we published Discussion Paper No 89, *The Effect of Death on Damages*, in pursuance of this reference. The original consultation period to 28 February 1991 was extended to 28 March 1991 to enable key consultees to submit

1. See Twenty-Second Annual Report 1986-87, Scot Law Com No 109, paras 2.46 and 2.48.

2. Discussion Paper No 94.

3. Scot Law Com No 128, paras 2.46-2.48

*Denotes programme subject.

comments on the issues under discussion. The results of the consultation have since been analysed and the main lines of policy established. We are now working on our final report which we would hope to submit towards the end of this year. (See paragraphs 1.6-1.8 above.)

Statute Law

Consolidation 2.49 As in previous reports we report under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

(a) Scotland-only consolidations 2.50 The Agricultural Holdings (Scotland) Act 1991 (c.55) received Royal Assent on 25 July 1991. We are still working on the Crofting and the Scottish Town and Country Planning legislation. The consolidation of the Crofting legislation will result in two new statutes and it is hoped that these Bills will be introduced during the course of 1992. Work on the Planning legislation is proceeding and will involve restructuring the legislation into four separate Bills. We do not anticipate that these will be ready for introduction until the end of 1992 or later. Work on the consolidation of the Criminal Procedure legislation has been suspended temporarily pending a decision by the Secretary of State for Scotland on whether a review of the legislation be undertaken. Work is also proceeding on the consolidation of the National Health Service (Scotland) and Lands Clauses legislation.

(b) United Kingdom and Great Britain consolidations 2.51 During the course of 1990 the Capital Allowances Act 1990 (c.1) was enacted.¹

2.52 Bills on the following subjects are in the course of preparation:

Capital Gains
Clean Air
Merchant Shipping
Radioactive Substances
Social Security
Tribunals and Inquiries.

Statute law revision 2.53 Work is continuing in association with our English colleagues on the Fourteenth Report on Statute Law Revision.

2.54 We very much value the close association between the two Law Commissions in this field, which we think enables us to make the best use of our necessarily more limited resources. Given that our primary commitment must be to priority law reform projects, no member of our legal staff can be allocated exclusively to statute law revision. We, therefore, continue to look for ways in which we can supplement the resources available to our statute law team. For example, it is our practice to employ a number of temporary student research assistants during the summer months. These assistants, supervised by one of our senior legal staff, can make a worthwhile contribution to the work of statute law revision. We are, therefore, using them increasingly for this purpose and in some cases re-engaging those who have shown a particular aptitude for the work at other times in the year when they are available.

Local legislation 2.55 The Joint Working Party on Local Legislation² has not met during the period covered by this report.

2.56 As mentioned in our last annual report,³ the two Law Commissions are co-operating in the production of a Chronological Table of Local Legislation. Work has continued during the past year on this long-term project, which is concerned with a large body of legislation never before adequately charted. The ultimate aim is to

1. Twenty-Fifth Annual Report 1989-90, (1990) Scot Law Com No 128, para 2.36.

2. see Appendix I.

3. Scot Law Com No 128, para 2.40.

identify and record all local and personal and private Acts which remain in force to any extent. The project has close links with the work of statute law revision. Many local Acts have been repealed in general terms without having been identified specifically. Others have been superseded by public general legislation, again without being expressly repealed. Until all such provisions are identified and explicitly repealed, it is impossible to record the effects of the local legislation concerned. The continuing series of Statute Law (Repeals) Acts is a useful vehicle for implementing the necessary repeals.

Database of statute law

2.57 In our last annual report,¹ we mentioned our involvement in the project, now managed by the Lord Chancellor's Department, to create a computer database of all United Kingdom public Acts. Treasury approval has now been given for the next phase of the project, which is principally concerned with the technical design of the required system. As a designated primary user of the system, we anticipate further involvement in the project, beginning in early 1992. In particular, we expect to participate in the process of editing statutory texts for inclusion in the database, which is likely to result in additional work for the Law Commissions' statute law revision teams.

Miscellaneous: advice to Government Departments, etc

2.58 It has been our practice to mention under this heading items which do not readily fit into any of the other classifications adopted in this report, including matters of an international character on which our advice has been sought by Government departments. In some instances such matters have been the subject of formal references to us under section 3(1)(e) of the Law Commissions Act 1965 and have resulted in our undertaking law reform projects. Matters in this category are covered elsewhere in this report. In other cases, however, the requests have been dealt with informally. We do not think it would be appropriate for us to give an exhaustive list of matters in the second category in this report.

1. Scot Law Com No 128, para 2.41.

Part III Consultation

The Law Commission for England and Wales

3.1 As mentioned in Part I, we continue our close co-operation with the Law Commission for England and Wales. During the year under review we have continued to work together on various matters, including fiduciary duties and regulatory bodies¹ and the reform of section 16 of the Sale of Goods Act 1979.² A joint report on *Rights of Suit in Respect of Carriage of Goods by Sea* was published in March 1991.³ In December 1990 a joint report on *Private International Law: Choice of Law in Tort and Delict* was also published.

3.2 We are grateful to the Law Commission for England and Wales for continuing to keep us informed of the progress of its work on topics of interest to us, and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of its projects.

Working party on contract law

3.3 Our Working Party⁴ on Contract Law has remained in being although it has not met during the year under review.

Other law reform organisations

3.4 We have maintained our contact with law reform organisations in various parts of the world and are pleased to welcome members of these organisations who come to visit us.

The legal and other professions, etc

3.5 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have held informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years, we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have assisted us in various ways.

3.6 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocates' Library, the Signet Library and the Institute of Advanced Legal Studies, London.

Media

3.7 On the publication of reports and the issue of discussion papers we issue a news release and usually hold a news conference. Such news conferences are normally well attended by members of the media, including representation from the daily and weekly newspapers and radio and television. During the year we have had good coverage of these news conferences and we are most grateful to the members of the media for attending and for reporting on the matters covered at the conferences. We also welcome the coverage given to our work by editors of various legal journals. One result of this publicity has been an increased demand from members of the public and from individual members of the legal profession for copies of our discussion

1. See para 2.44.

2. See para 2.27.

3. Law Com No 196, Scot Law Com No 130.

4. A list of the present members of the Working Party appears in Appendix I to the report.

papers. Such demands frequently result in the submission of comments on the proposals contained in these papers. We value this participation by the public and take the opportunity in this Annual Report of expressing our thanks to all those who contribute to this part of our consultation process.

Conferences, seminars, etc

3.8 Commissioners and members of our legal staff attended a number of conferences, seminars and colloquia in the course of the year under review.

Part IV Miscellaneous

Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Davidson, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE	(Part-time)
Sheriff I D Macphail, QC	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)

Staff

4.2 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the summer vacation of 1990 we employed five honours graduates in law to assist with our research work. We wish to thank them all for their assistance. Our complement of non-legal staff remains at eleven. We wish to thank them all for their assistance.

4.3 At the date of preparation of this report the principal members of staff were:

<i>Parliamentary draftsmen</i>	
Mr J F Wallace, QC	(Full-time)
Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC	(Part-time)

Secretary
Mr K F Barclay

Grade 5 Solicitors
Mr R Bland
Mr N R Whitty

Other members of legal staff
Mrs A F Bevan
Mr J M Dods
Mr J G S Maclean
Dr D I Nichols
Mr J B St Clair
Mrs G B Swanson

Librarian
Mr N G T Brotchie

Chief Clerk
Mr J Dodson

Departmental committees and other bodies

4.4 Our Commissioners and legal staff are from time to time appointed to serve on Government and departmental committees and as members of other bodies concerned with the development and reform of the law.

Statute Law Committee

4.5 As was mentioned in previous reports, our Chairman served on the Statute Law Committee and was a member of the Editorial Board for Statutes in Force. The

Commission's full-time Parliamentary Draftsman acted as an alternative member of the Editorial Board. In addition, our Secretary was a member of the 'Secretariat' set up under the chairmanship of the Permanent Secretary of the Lord Chancellor's Department to assist the Statute Law Committee in its work. The Statute Law Committee has now been replaced by the Advisory Committee on Statute Law and our Chairman will be a member of that Committee.¹

Scottish Advisory Committee

4.6 A member of our legal staff, Mrs A F Bevan, is a member of the Scottish Advisory Committee on Arbitration Law, but not in a representative capacity. The Committee submitted their report to you on the adoption of the UNCITRAL model law on international and commercial arbitration in September 1989. The Committee's report was implemented by section 60 and Schedule 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The Committee is currently engaged in considering the domestic law of arbitration.

Scrutiny of bills

4.7 As indicated in previous annual reports we now confine our detailed scrutiny of Bills to those which particularly touch upon areas of law under current examination by us.

Appendices

4.8 Membership of Working Parties appears in Appendix I. In Appendix II we list reports, consultative memoranda and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

1. Hansard, House of Lords Written Answer 13.6.1991, col WA 65/66.

Appendix I

Membership of Working Parties

Joint Working Party on Local Legislation

The Hon Mr Justice Peter Gibson (Chairman)

The Hon Lord Davidson (Chairman)

Mr H W Gamon, CBE MC

Mr J G S Maclean (as alternate for Lord Davidson)

Mr R J B Morris

Mr D Rippengal, CB QC

Mr R H Streeten

Mr M J Ware, CB QC

Secretary: Mr A M Rowland, Law Commission for England and Wales

Law Commission for England and Wales

Scottish Law Commission

Society of Parliamentary Agents

Scottish Law Commission

Chief Executive and Town Clerk, Northampton Borough Council

Counsel to Chairman of Committees

Law Commission for England and Wales

Solicitor, Department of the Environment

Working Party on Contract Law

Professor P N Love, CBE (Chairman)

Professor R Black, QC

Mr M G Clarke, QC

Professor W W McBryde

Secretary: Mrs A F Bevan, Scottish Law Commission

Scottish Law Commission

University of Edinburgh

Faculty of Advocates

University of Dundee

Appendix II

1 Scottish Law Commission—Reports, Etc Published by Her Majesty's Stationery Office

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
<hr/>		
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965–66
<hr/>		
1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce—The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966–67
<hr/>		
1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967–68
<hr/>		
1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968–69
<hr/>		
1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969–70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd 4547)
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1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic—Road Traffic Bill (Cmnd 4731)
	23	Sixth Annual Report 1970–71
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1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)
<hr/>		
1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971–72
	29	Third Programme of Law Reform

*Produced jointly with the Law Commission for England and Wales.

Commission

	<i>No</i>	
	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd 5493)
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1974	33	Eighth Annual Report 1972–73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
	36	*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)
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1975	37	Ninth Annual Report 1973–74
	38	*Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
	39	*Exemption Clauses—Second Report
	40	*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
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1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liabilities for Defective Products (Cmnd 6831)
<hr/>		
1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976–77
	48	*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill—Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
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1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
	67	Family Law—Report on Aliment and Financial Provision

Commission

No

	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980–81
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1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law—Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981–82
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1983	74	Prescription and the Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law—Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill—Report on the consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence—Report on Evidence in Cases of Rape and Other Sexual Offences
	79	Obligations—Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime (Cmnd 9047)
	81	Eighteenth Annual Report 1982–83
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1984	82	Family Law—Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill—Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill—Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd 9162)
	86	Family Law—Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983–84
	90	Report on Breach of Confidence
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1985	91	*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations—Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Cmnd 9515)
	95	Report on Diligence and Debtor Protection
	96	*Private International Law—Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Cmnd 9595)
	97	Obligations—Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984–85
	99	Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
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1986	100	Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985–86
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1987	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Scotland (Cm 104)
	104	*Report on Sale and Supply of Goods (Cm 137)
	105	*Private International Law—Report on Choice of Law Rules in Marriage
	106	Report on Computer Crime (Cm 174)
	107	*Private International Law—Report on the Law of Domicile (Cm 200)
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1988	108	Report on the Scottish Term and Quarter Days (Cm 208)
	109	Twenty-Second Annual Report 1986–87

*Produced jointly with the Law Commission for England and Wales.

*Commission**No*

	110	Report on the Legal Capacity and Responsibility of Minors and Pupils
	111	Court of Session Bill (Cm 315)
	112	Report on Requirements of Writing
	113	*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill—Report on the Consolidation of Certain Enactments relating to Road Traffic (Cm 390)
	114	Twenty-Third Annual Report 1987–88
	115	Report on Civil Liability—Contribution
<hr/>		
1989	116	Report on Reform of the Ground for Divorce
	117	*Statute Law Revision—Thirteenth Report: Draft Statute Law (Repeals) Bill (Cm 671)
	118	Report on Recovery of Possession of Heritable Property
	119	*Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition
	120	Evidence: Blood Group Tests, DNA Tests and Related Matters
	121	*Opticians Bill—Report on the Consolidation of Legislation Relating to Opticians
	122	Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Cm 790)
	123	Twenty-Fourth Annual Report 1988–89
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1990	124	Report on Succession
	125	Report on the Evidence of Children and Other Potentially Vulnerable Witnesses
	126	Fourth Programme of Law Reform
	127	Report on the Passing of Risk in Contracts for the Sale of Heritable Property
	128	Twenty-Fifth Annual Report 1989–90
	129	*Private International Law—Choice of Law in Tort and Delict
<hr/>		
1991	130	*Rights of Suit in Respect of Carriage of Goods by Sea

2 Scottish Law Commission—Consultative memoranda/Discussion papers circulated for comment and criticism

		<i>No of Resulting Report</i>
1966	Memorandum No 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964	
	Memorandum No 2—Expenses in Criminal Cases	
1967	Memorandum No 3—Restrictions on the Creation of Liferents	
	Memorandum No 4—Applications for Planning Permission	
	Memorandum No 5—Damages for Injuries Causing Death	
	*Memorandum No 6—Interpretation of Statutes	11
1968	*Memorandum No 7—Provisional Proposals Relating to Sale of Goods	12
	Memorandum No 8—Draft Evidence Code—First Part	
1969	Memorandum No 9—Prescription and Limitation of Actions	15
	Memorandum No 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961	14
	Memorandum No 11—Presumptions of Survivorship and Death	34
	Memorandum No 12—Judgments Extension Acts	
1970	Memorandum No 13—Jurisdiction in Divorce	25
1971	Memorandum No 14—Remedies in Administrative Law	
	*Memorandum No 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts	39
	Memorandum No 16—Insolvency, Bankruptcy and Liquidation	68
1972	Memorandum No 17—Damages for Injuries Causing Death	31 and 64
1974	Memorandum No 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse	42
	Memorandum No 19—Powers of Judicial Factors	59
1975	*Memorandum No 20—Liability for Defective Products	45
	Memorandum No 21—Damages for Personal Injuries—Deductions and Heads of Claim	51

*Produced jointly with the Law Commission for England and Wales.

	<i>No of Resulting Report</i>
1976	
Memorandum No 22—Aliment and Financial Provision (2 Vols)	67
*Memorandum No 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom	91
Memorandum No 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals	
Memorandum No 25—Corporeal Moveables—Passing of Risk and of Ownership	
Memorandum No 26—Corporeal Moveables—Some Problems of Classification	
Memorandum No 27—Corporeal Moveables—Protection of the Onerous <i>bona fide</i> Acquirer of Another's Property	
Memorandum No 28—Corporeal Moveables—Mixing, Union and Creation	
Memorandum No 29—Corporeal Moveables—Lost and Abandoned Property	57
Memorandum No 30—Corporeal Moveables—Usucapion or Acquisitive Prescription	
Memorandum No 31—Corporeal Moveables—Remedies	
Memorandum No 32—Comments on White Paper ' <i>Our Changing Democracy: Devolution to Scotland and Wales</i> ' Appendix—Devolution, Scots Law and the Role of the Commission	
Memorandum No 33—Law of Rights in Security—Company Law—Registration of Charges: Scotland	
1977	
Memorandum No 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals	
Memorandum No 35—Constitution and Proof of Voluntary Obligations—Unilateral Promises	
Memorandum No 36—Constitution and Proof of Voluntary Obligations—Formation of Contract	
Memorandum No 37—Constitution and Proof of Voluntary Obligations—Abortive Constitution	
Memorandum No 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties	
Memorandum No 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof	112
Memorandum No 40—Confidential Information	90
1978	
Memorandum No 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)	60
Memorandum No 42—Defective Consent and Consequential Matters (2 Vols)	92
1979	
Memorandum No 43—Defective Expression and its Correction	79
1980	
Memorandum No 44—The Law of Incest in Scotland	69
Memorandum No 45—Time-Limits in Actions for Personal Injuries	74
Memorandum No 46—The Law of Evidence	78 and 100
Memorandum No 47—First Memorandum on Diligence: General Issues and Introduction	95
Memorandum No 48—Second Memorandum on Diligence: Poindings and Warrant Sales	95
Memorandum No 49—Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings	95
Memorandum No 50—Fourth Memorandum on Diligence: Debt Arrangement Schemes	95
Memorandum No 51—Fifth Memorandum on Diligence: Administration of Diligence	95
Memorandum No 52—Irritancies in Leases	75
1982	
Memorandum No 53—Family Law: Illegitimacy	82
Memorandum No 54—Some Obsolete and Discriminatory Rules in the Law of Husband and Wife	76
Memorandum No 55—Civil Liability in relation to Animals	97
*Memorandum No 56—Polygamous Marriages (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)	96
1983	
Memorandum No 57—Matrimonial Property	86
*Memorandum No 58—Sale and Supply of Goods	104
1984	
Memorandum No 59—Recovery of Possession of Heritable Property	118
Memorandum No 60—Mobbing and Rioting	
Memorandum No 61—Attempted Homicide	
*Memorandum No 62—Private International Law: Choice of Law in Tort/Delict	129
1985	
*Memorandum No 63—Private International Law: The Law of Domicile	107
*Memorandum No 64—Private International Law: Choice of Law Rules in Marriage	105

*Produced jointly with the Law Commission for England and Wales.

	<i>No of Resulting Report</i>
Memorandum No 65—Legal Capacity and Responsibility of Minors and Pupils	110
Memorandum No 66—Constitution and Proof of Voluntary Obligations and the Authentication of Writings	112
Memorandum No 67—Child Abduction	102
1986 Memorandum No 68—Computer Crime	106
Memorandum No 69—Intestate Succession and Legal Rights	124
Memorandum No 70—The Making and Revocation of Wills	124
Memorandum No 71—Some Miscellaneous Topics in the Law of Succession	124
Memorandum No 72—Floating Charges and Receivers	
Memorandum No 73—Civil Liability—Contribution	115
1987 Memorandum No 74—Prescription and Limitation of Actions (Latent Damage)	122
1988 Discussion Paper No 75—The Evidence of Children and Other Potentially Vulnerable Witnesses	125
Discussion Paper No 76—The Ground for Divorce—Should the law be changed?	116
Discussion Paper No 77—Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings	
Discussion Paper No 78—Adjudications for Debt and Related Matters	
Discussion Paper No 79—Equalisation of Diligences	
Discussion Paper No 80—Blood Group Tests, DNA Tests and Related Matters	120
1989 Discussion Paper No 81—Passing of Risk in Contracts for the Sale of Land	127
Discussion Paper No 82—Forfeiture and Confiscation	
Discussion Paper No 83—Bulk Goods: Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1885	130
Discussion Paper No 84—Diligence on the Dependence and Admiralty Arrestments	
1990 Discussion Paper No 85—Family Law: Pre-Consolidation Reform	
Discussion Paper No 86—The Effects of Cohabitation in Private Law	
Discussion Paper No 87—Statutory Fees for Arrestees	133
Discussion Paper No 88—Parental Responsibilities and Rights, Guardianship and the Administra- tion of Children's Property	
Discussion Paper No 89—The Effect of Death on Damages	
Discussion Paper No 90—Extra-Territorial Effect of Arrestments and Related Matters	
Discussion Paper No 91—Law of the Tenement	
1991 Discussion Paper No 92—Confidentiality in Family Mediation	
Discussion Paper No 93—Property Law—Abolition of the Feudal System	

3 Scottish Law Commission—Other published documents

1974	*Private International Law—Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations
1979	Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
1984	Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
1986	Report of Working Party on Security over Moveable Property
1988	Research Paper on Evidence from Children—Alternatives to In-court Testimony in Criminal Proceedings in the United States of America by Kathleen Murray.
1991	Report on the Effect of the Execution of Diligence on the Operation of Prescription.

4 Scottish Law Commission—Consultative documents not published and with restricted circulation

1969	Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
1973	Consultation Paper on Divorce for Incurable Insanity
1974	Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper

*Produced jointly with the Law Commission for England and Wales.

- 1978** Consultation Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
- 1979** Consultation Paper—Bankruptcy: *Gibson v Hunter Home Designs Ltd*
Consultative Note on section 5 (6) of the Damages (Scotland) Act 1976
- 1980** Consultation Paper—Prescription and Limitation in Private International Law
- 1981** Consultation Paper—Financial Provision after Foreign Divorce
- 1982** Consultation Paper—Exchange of Standard Term Forms in Contract Formation
Consultation Paper—Breach of Confidence
- 1983** Consultation Paper—Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court
Supplementary Consultation Paper—Conflicts of Jurisdiction affecting the Custody of Children
Consultation Paper—Illegitimacy and the Guardianship Acts
*Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters
- 1984** Consultation Paper—Art and Part Guilt of Statutory Offences
- 1986** Consultation Paper—The Scottish Term and Quarter Days: A Statutory Definition (Resulting Report—Scot Law Com No 108)
Consultation Paper—Termination of Leases: Contracting Out of the Statutory Notice Provisions
- 1990** Arrestments of Ships Securing Claims against Demise Charterers
The Effect of the Execution of Diligence on the Operation of Prescription
- 1991** *Supplementary Consultation Paper—Sale of Goods Forming Part of a Bulk

5 Scottish Law Commission—Unpublished Confidential Documents

- 1975** *Interim Report on the EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations

*Produced jointly with the Law Commission for England and Wales.

Appendix III

Statutory Provisions relating to the Scottish Law Commission's Proposals

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18.
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5.
Divorce—The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39).
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83).
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50).
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None.
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52).
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53).
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24).
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10).
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29).
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41).
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20).
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45).
*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39).
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required.
Report on the Law Relating to Damages for Injuries causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13).
*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22).
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27).
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46).
*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10).
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9).
*Exemption Clauses—Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50).
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39).
*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18).
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	None.
*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45).
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11).
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56).
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2).
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI.
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44).
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59).
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20).
*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982 (c 53), Part II.
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65).
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd 8318)	28.7.81	None required.
Family Law—Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37).
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66).
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36).
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV.
Prescription and Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45).
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Family Law—Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15).
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54).
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required.

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Family Law—Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).
*Amendment of the Companies Acts 1948–1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6).
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24).
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27).
Family Law—Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37).
*Further Amendments of the Companies Acts 1948–1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6).
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	Family Law Act 1986 (c 55).
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None required.
*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	Family Law Act 1986 (c 55).
Obligations—Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	Criminal Justice (Scotland) Act 1987 (c 41).
*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69).
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	In part by Debtors (Scotland) Act 1987 (c 18).
*Private International Law—Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	None.
Obligations—Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9).
*Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12).
Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	Civil Evidence (Scotland) Act 1988 (c 32).
Report on Child Abduction (Scot Law Com No 102) (Cm 64)	12.2.87	None.
Housing (Scotland) Bill (Scot Law Com No 103) (Cm 104)	17.3.87	Housing (Scotland) Act 1987 (c 26)
*Report on Sale and Supply of Goods (Scot Law Com No 104) (Cm 137)	28.5.87	None.

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*Private International Law—Report on Choice of Law Rules in Marriage (Scot Law Com No 105)	2.7.87	Foreign Marriage Amendment Act 1988 (c 44).
Report on Computer Crime (Scot Law Com No 106) (Cm 174)	23.7.87	In part by Computer Misuse Act 1990 (c 18).
*Private International Law—Report on the Law of Domicile (Scot Law Com No 107) (Cm 200)	3.9.87	None.
Report on the Scottish Term and Quarter Days (Scot Law Com No 108) (Cm 208)	29.10.87	Term and Quarter Days (Scotland) Act 1990 (c 22).
Report on the Legal Capacity and Responsibility of Minors and Pupils (Scot Law Com No 110)	17.12.87	Age of Legal Capacity (Scotland) Act 1991 (c 50).
Court of Session Bill—Report on the Consolidation of Certain Enactments and the Repeal of Other Enactments relating to the Court of Session (Scot Law Com No 111) (Cm 315)	9.3.88	Court of Session Act 1988 (c 36).
Report on Requirements of Writing (Scot Law Com No 112)	13.7.88	None.
*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill—Report on the Consolidation of Certain Enactments relating to Road Traffic (Scot Law Com No 113) (Cm 390)	6.6.88	Road Traffic Act 1988 (c 52), Road Traffic Offenders Act 1988 (c 53), Road Traffic (Consequential Provisions) Act 1988 (c 54).
Report on Civil Liability Contribution (Scot Law Com No 115)	15.12.88	None.
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	None.
*Statute Law Revision Thirteenth Report—Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	Statute Law Repeals Act 1989 (c 43)
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	None.
*Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	Extradition Act 1989 (c 33)
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)	19.10.89	Partial implementation, section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40).
*Opticians Bill—Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	Opticians Act 1989 (c 44)
Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Scot Law Com No 122) (Cm 790)	12.10.89	None.
Report on Succession (Scot Law Com No 124)	25.1.90	None.
Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125)	15.2.90	Partial implementation in sections 56, 59 and 60 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40).
Report on the Passing of Risk in Contracts for the Sale of Heritable Property (Scot Law Com No 127)	18.10.90	None.
*Private International Law—Choice of Law in Tort and Delict (Scot Law Com No 129)	12.12.90	None.
*Rights of Suit in Respect of Carriage of Goods by Sea (Scot Law Com No 130)	20.3.91	None.

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